

1 The Honorable James L. Robart
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 RONNIE CRUICKSHANK,) CV _____
11 Petitioner,) CR 17-323-JLR
12)
13 v.) MOTION TO VACATE JUDGMENT
14 UNITED STATES OF AMERICA,) UNDER 28 U.S.C. § 2255
15)
16 Respondent.)
17 _____

18 Ronnie Cruickshank, through undersigned counsel, hereby files a motion to
19 vacate his conviction and set aside the judgment in this case pursuant to 28 U.S.C.
20 § 2255. As explained below, Mr. Cruickshank's guilty plea under 18 U.S.C. § 922(g)
21 must be vacated in light of the Supreme Court's recent decision in *Rehaif v. United*
22 *States*, __ U.S.__, 139 S. Ct. 2191 (2020).

23 **I. Custody Status**

24 Bureau of Prisons No.: 35844-086

25 Place of Confinement: Terminal Island FCI. Following release from custody, Mr.
26 Cruickshank will be on supervised release for five years.

27 **II. Procedural History**

28 1. (a) Name and location of court that entered judgment: Western District of
29 Washington; Seattle, Washington.
30 (b) Case number: CR 17-323-JLR
31 2. (a) Date of judgment: 10/22/18, Dkt 54.

1 (b) Date of sentencing: 10/11/18, Dkt 50.

2 3. Length of sentence: 72 months in custody for each count to run concurrently; 5
3 years of supervised release.

4 4. Nature of crime (all counts): Felon in possession of a firearm, in violation of
5 violation of 18 U.S.C. § 922(g)(1); Distribution of 50 grams or more of
6 methamphetamine in violation of 21 U.S.C. §§ 841(b)(1), (b)(1)(A), and 846.

7 5. What was your plea: Guilty

8 6. Did you have trial by judge or jury: No

9 7. Did you testify at pretrial hearing, trial, or post-trial hearing: No

10 8. Did you appeal from judgment: No

11 9. If you appealed, answer:

12 (a) Name of court:

13 (b) Docket or case number:

14 (c) Result:

15 (d) Date of result:

16 (e) Citation to case:

17 (f) Grounds raised:

18 (g) Did you file a petition for certiorari to the U.S. Supreme Court:

19 If yes, answer the following:

20 (i) Docket or case number:

21 (ii) Result:

22 (iii) Date of result:

23 (iv) Citation to case:

24 (v) Grounds raised:

25 10. Other than direct appeals listed above, have you previously filed other motions,
26 petitions, or applications concerning this judgment in any court: There have been no

1 prior §2255 or §2241 motions in this case. There is a pending motion seeking
2 compassionate release that has not yet been decided. *See* Dkts 55-60.

3 11. (a) If your answer to Question 10 was yes, provide the following information:

- 4 (i) Name of court:
- 5 (ii) Docket or case number:
- 6 (iii) Date of filing:
- 7 (iv) Nature of proceeding:
- 8 (v) Grounds raised:
- 9 (vi) Did you receive a hearing where evidence was given on your motion,
10 petition, or application:
- 11 (vii) Result:
- 12 (viii) Date of result:

13 (b) If you filed any second motion, petition, or application, give the same
14 information:

- 15 (i) Name of court:
- 16 (ii) Docket or case number:
- 17 (iii) Date of filing:
- 18 (iv) Nature of proceeding:
- 19 (v) Grounds raised:
- 20 (vi) Did you receive a hearing where evidence was given on your motion,
21 petition, or application:
- 22 (vii) Result:
- 23 (viii) Date of result:

24 (c) Did you appeal to a federal appellate court having jurisdiction over the
25 action taken on your motion, petition, or application:

- 26 (i) First petition:

(ii) Second petition:

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why not:

(12) For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. State the facts supporting each ground.

III. Ground One: Mr. Cruickshank's Guilty Plea Was Not Knowing and Intelligent in Violation of the Fifth Amendment's Due Process Clause and Fed. R. Crim. P. 11(b)(G).

- A. The Supreme Court abrogated longstanding Ninth Circuit precedent by expanding the knowledge requirement in 18 U.S.C. § 922(g).

18 U.S.C. § 922(g) provides that “[i]t shall be unlawful” for certain individuals to possess firearms. The provision lists nine categories of individuals subject to the prohibition. In *Rehaif*, the Supreme Court held that the government “must prove both that the defendant knew he possessed a firearm and that he knew he belonged to the relevant category of persons barred from possessing a firearm.” 139 S. Ct. at 2200. In other words, an individual is not guilty of a § 922(g) offense unless he had knowledge of his prohibited status within one of the nine categories under the statute at the time he possessed a firearm.

In so holding, *Rehaif* abrogated longstanding Ninth Circuit precedent (as well as that of every federal court of appeals) holding that a defendant’s knowledge of his prohibited status is not an element of a § 922(g) offense. *See United States v. Enslin*, 327 F.3d 788, 798 (9th Cir. 2003) (citing *United States v. Miller*, 327 F.3d 788 (9th Cir. 1997)); *see also United States v. Langley*, 62 F.3d 602, 606 (4th Cir. 1995) (en banc); *United States v. Huet*, 665 F.3d 588, 596 (3d Cir. 2012); *United States v. Games-Perez*, 667 F.3d 1136, 1142 (10th Cir. 2012); *United States v. Rose*, 587 F.3d 695, 705–06 & n.9 (5th Cir. 2009); *United States v. Bryant*, 523 F.3d 349, 354 (D.C. Cir. 2008); *United*

1 *States v. Olender*, 338 F.3d 629, 637 (6th Cir. 2003); *United States v. Lane*, 267 F.3d
 2 715, 720 (7th Cir. 2001); *United States v. Kind*, 194 F.3d 900, 907 (8th Cir. 1999);
 3 *Jackson v. United States*, 120 F.3d 1226 (11th Cir. 1997); *United States v. Smith*, 940
 4 F.2d 710, 713 (1st Cir. 1991).

5 **B. *Rehaif* voids Mr. Cruickshank’s § 922(g) conviction.**

6 *Rehaif* now voids Mr. Cruickshank’s guilty plea because this Court accepted it
 7 without advising Mr. Cruickshank of the element requiring knowledge of his or her
 8 prohibited status under § 922(g). Because the Court failed to advise Mr. Cruickshank of
 9 an element of the offense to which he or she pled guilty, the plea was not knowingly
 10 and intelligently made, and in turn violated the Due Process Clause under the
 11 Constitution and Fed. R. Crim. P. 11(b)(G).

12 Mr. Cruickshank pleaded guilty to violating § 922(g) long before *Rehaif* was
 13 decided. Unsurprisingly, no one involved in the proceedings correctly understood the
 14 elements of the offense to which Mr. Cruickshank pled. Mr. Cruickshank was never
 15 told during the plea proceedings – either in his plea agreement or at the change of plea
 16 hearing – that the crime required proof that he knew he had been convicted of a crime
 17 punishable by more than one year at the time he possessed the weapon. *See* Dkt. 38
 18 (plea agreement). Because Mr. Cruickshank was not advised of the true nature of the
 19 charge, his guilty plea is “constitutionally invalid” and cannot stand. *Bousley v. United*
 20 *States*, 523 U.S. 614, 619 (1998).

21 *Bousley* addressed a situation very similar to Mr. Cruickshank. In an earlier case,
 22 the Supreme Court had narrowed the scope of a federal criminal statute, and *Bousley*
 23 later filed a section 2255 motion seeking to undo his guilty plea to violating the newly
 24 construed provision on the grounds that he had been misinformed of the offense’s
 25 elements. *Id.* at 616–17. The Court recognized that if *Bousley*’s allegations proved true,
 26 his plea would be “constitutionally invalid.” *Id.* at 619. And that recognition was

1 grounded in the principle that when pleading guilty, a defendant must receive “real
 2 notice of the true nature of the charge against him.” *Id.* at 618. This principle, as the
 3 Court recognized, is “the first and most universally recognized requirement of due
 4 process.” *Id.*

5 Once the violation is established, relief is required. *Rehaif* error is structural and
 6 is not subject to harmless error analysis. *United States v. Gary*, 954 F.3d 194, 198 (4th
 7 Cir. 2020).

8 Even if *Rehaif* error is subject to harmless error analysis, the error is not
 9 harmless. *See Nair v. United States*, No. C19-1751JLR, 2020 WL 1515627, at *5 (W.D.
 10 Wash. Mar. 30, 2020) (citing *Henderson v. Morgan*, 426 U.S. 637, 646 (1976)
 11 (“Harmlessness in a guilty plea case . . . focuses on whether the defendant was in fact
 12 informed of the missing element through some other means.”). Because a guilty plea
 13 without notice of the true charges is constitutionally invalid, this type of error can be
 14 harmless only if there is record proof that the defendant was made aware of the missing
 15 element through other means or if the record otherwise contains an admission by the
 16 defendant to that element. *See Henderson v. Morgan*, 426 U.S. 637 (1976). In
 17 *Henderson*, the defendant was not advised of a mens rea element necessary to commit
 18 the charged offense. This rendered the plea invalid despite the fact, assumed by the
 19 Court, that the “prosecutor had overwhelming evidence” of the omitted element. *Id.* at
 20 644. The only thing that could have saved the plea was “a substitute for” the
 21 defendant’s voluntary admission to the element – a stipulation to the element, evidence
 22 that the element was otherwise “explain[ed] to” the defendant, or a statement by the
 23 defendant “necessarily implying that he had [the requisite] intent.” *Id.* at 646. Because
 24 the record contained no substitute of this kind, his guilty plea could not survive. *Id.*; *see also*
 25 *United States v. Dominguez Benitez*, 542 U.S. 74, 85 n.10 (2004) (considering
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1 similar but distinct issue of Rule 11 violations as opposed to “the constitutional
 2 question whether a defendant’s guilty plea was knowing and voluntary”).

3 **C. Mr. Cruickshank’s claim is cognizable under 28 U.S.C. § 2255(a).**

4 Mr. Cruickshank’s claim is cognizable under 28 U.S.C. § 2255(a) because his
 5 guilty plea is unconstitutional and violates the laws of the United States.

6 **D. *Rehaif* is retroactively applicable to Mr. Cruickshank’s case.**

7 Finally, *Rehaif* is retroactively applicable here. Under *Teague v. Lane*, 489 U.S.
 8 288 (1989), a Supreme Court decision applies retroactively to cases on collateral review
 9 if it announces a rule that is “substantive.” *Welch v. United States*, __ U.S.__, 136 S. Ct.
 10 1257, 1264 (2016). A decision is “substantive” if it “alters the range of conduct or the
 11 class of persons that the law punishes.” *Id.* at 1264–65 (citation omitted). “This includes
 12 decisions that narrow the scope of a criminal statute by interpreting its terms.” *Id.* at
 13 1265 (citation omitted).

14 *Rehaif* is exactly such a decision. Before *Rehaif*, the lower courts had
 15 expansively interpreted § 922(g) to punish the possession of firearms by individuals
 16 who fell within a prohibited class, even if they did not know that they fell within the
 17 class at the time they possessed the firearms. But *Rehaif* narrowed the scope of § 922(g)
 18 by interpreting it to require knowledge of one’s prohibited status at the time a firearm is
 19 possessed. In so doing, the Court altered the range of conduct and class of persons
 20 punishable under § 922(g). Therefore, *Rehaif* announced a substantive rule that is
 21 retroactive.

22 The Supreme Court’s decision in *Bousley*, 523 U.S. at 620–21, reinforces that
 23 *Rehaif* is retroactive. In *Bousley*, *id.*, the Supreme Court held that its decision in *Bailey*
 24 *v. United States*, 516 U.S. 137 (1995), was substantive, and therefore retroactive. In
 25 *Bailey*, the Supreme Court construed 18 U.S.C. § 924(c)(1), which at the time only
 26 criminalized the “use” or “carr[ying]” of a firearm during and in relation to a crime of

1 violence. Previously, some lower courts had interpreted the “use” language in the
2 provision to require only accessibility and proximity to the firearm, not active
3 employment of the firearm. But in *Bailey*, the Supreme Court held that “active
4 employment” of the firearm was required under § 924(c)(1). 516 U.S. at 144. In
5 *Bousley*, the Supreme Court ruled that *Bailey* announced a substantive (and therefore
6 retroactive) rule because it narrowed the scope of the § 924(c) statute by holding that
7 the statute “does not reach certain conduct”—i.e., the non-active use of a firearm.
8 *Bousley*, 523 U.S. at 620. Likewise, *Rehaif* announced a substantive (and therefore
9 retroactive) rule because it narrowed the scope of the § 922(g) statute by holding that it
10 does not reach certain conduct—i.e., the possession of a firearm by a defendant who, at
11 the time, had no knowledge of his or her prohibited status.

IV. Conclusion

Mr. Cruickshank respectfully requests that this Court grant his motion and vacate his invalid and unconstitutional guilty plea.

Dated this 16th day of June 2020.

Respectfully submitted,

s/ *Dennis Carroll*

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Attorney for Ronnie Lee Cruickshank